

M O R T G A G E

RECORDATION NO. 6428-B Vol. 1 Recorded

DEC 16 1971 - 11 35 AM

INTERSTATE COMMERCE COMMISSION

KNOW ALL MEN BY THESE PRESENTS, that DELAWARE FREIGHT CAR CORP., a New York corporation having its principal office and place of business at 120 Delaware Avenue, Buffalo, New York ("Mortgagor"), as collateral security for the payment in full of indebtedness of the Mortgagor contracted to MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation having its principal office and place of business at One M & T Plaza, Buffalo, New York ("Mortgagee"), in the aggregate principal amount of \$1,390,000, evidenced by a note of the Mortgagor in the sum of \$624,042.40 bearing the date of November 22, 1971, by a note of the Mortgagor in the sum of \$312,021.20 bearing the date of November 23, 1971, by a note of the Mortgagor in the sum of \$312,021.20 bearing the date of November 30, 1971, and by a note of the Mortgagor in the sum of \$141,915.20 bearing the date of December 15, 1971, together with any and all renewals or extensions thereof and interest thereon and all sums which the Mortgagor at any time may be liable to pay hereunder, (all of which is hereinafter referred to as the "Indebtedness") the Mortgagor hereby sells, transfers and assigns unto the Mortgagee One Hundred 100-ton steel rotary dump coal gondola railroad cars bearing the following car numbers assigned by Yankeetown Dock Corporation:

YDC-200 through YDC-299, both inclusive,
together with all repairs, accessories, attachments and other equipment now or hereafter attached thereto. PROVIDED ALWAYS, and this Mortgage is on the express condition, that if the Mortgagor shall pay the Indebtedness in full to the Mortgagee, then this transfer to be void and of no effect.

The Mortgagor hereby represents and warrants to the Mortgagee that the Mortgagor is the true and lawful owner and has the right to mortgage, sell, transfer and assign such cars, and that the same are free and clear from any and all liens, claims and encumbrances thereon -- excepting only that all of said cars have been delivered and leased to Yankeetown Dock Corporation, as lessee, under and pursuant to the provisions of a certain equipment lease dated October 29, 1971 entered into between the Mortgagor and said Yankeetown Dock Corporation (hereinafter called the "Lease"), and filed with the Interstate Commerce Commission on November 19, 1971 under Recordation Number 6428.

IT IS HEREBY AGREED by the Mortgagor that in the event of any default by the Mortgagor in the performance of any of the conditions of this Mortgage or in the payment of any installment of principal or of interest on the Indebtedness, or if the Mortgagor shall sell, assign or in any manner dispose of, or attempt to sell, assign or dispose of any of the said cars, other than pursuant to the Lease, or if any of the said cars shall be misused or put to any illegal or unlawful use by any person whatsoever or in case of seizure of any of the said cars by any process of law whatsoever, or in the event of insolvency or bankruptcy of the Mortgagor, whether voluntary or involuntary, or if an application for receivership of any nature be filed or a receiver of any of the assets of the Mortgagor be appointed or if the Mortgagee at any time shall deem itself insecure or its security inadequate, the Mortgagee may declare the entire amount of the Indebtedness then remaining unpaid to be immediately due and payable, without notice to anyone and it shall be lawful for the Mortgagee, or its duly authorized agent, to enter upon the premises of the Mortgagor, or any place where said cars may be, and, with-

out making any demand for the possession, to take possession thereof and to sell the same at public or private sale without notice of sale which is hereby expressly waived by the Mortgagor, and to apply the proceeds of such sale, after deducting the expenses of such sale, the expenses of taking possession and storing said cars, upon the Indebtedness, the Mortgagee having the right to become the purchaser at such sale the same as a person not interested herein, and if there be a deficiency after such sale, as aforesaid, the Mortgagor covenants and agrees to pay the same. The rights and remedies herein specified are cumulative and are not exclusive of any rights or remedies which the Mortgagee may otherwise have.

This Mortgage is made pursuant to the Uniform Commercial Code of New York, and all rights and obligations hereunder, and the rights and duties of the parties hereto with respect to the cars and all collateral, including matters of construction, validity and performance, shall be governed by and interpreted in accordance with such Code and with the laws of the State of New York. Wherever possible each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions hereof.

This Mortgage shall inure to the benefit of and be binding upon the parties hereto and upon their respective successors and assigns.

IN WITNESS WHEREOF, the Mortgagor has duly executed
this Mortgage on this 15th day of December, 1971.

DELAWARE FREIGHT CAR CORP.

By

Julian L. S. Morrison
President

[SEAL]

STATE OF NEW YORK)
COUNTY OF ERIE) SS.

On this 15th day of December, 1971, before me came
JULIAN L. S. MORRISON, to me known, who being by me duly sworn,
did depose and say that he resides at 157 Deerpark Boulevard,
Town of Tonawanda, New York; that he is the President of
DELAWARE FREIGHT CAR CORP., the corporation described in and which
executed the foregoing Mortgage; that he knows the seal of said
corporation; that the seal affixed to said Mortgage is such corpo-
rate seal; that it was so affixed by order of the Board of Direc-
tors of said corporation, and that he signed his name thereto by
like order.

Samuel L. Shapiro

SAMUEL L. SHAPIRO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1972

STATE OF NEW YORK)
COUNTY OF ERIE) SS.

NORMAN W. FLANIGAN, being duly sworn, according to law,
says that he is an Assistant Vice President of MANUFACTURERS AND
TRADERS TRUST COMPANY, the Mortgagee named in the within Mortgage;
that the said Mortgagee, Manufacturers and Traders Trust Company,
has a valid claim against the within named Mortgagor which amounts
to \$1,390,000; that said claim is just and unpaid; and that the
within Mortgage is given in good faith to secure the same.

Norman W. Flanigan
Asst. Vice Pres.

Sworn to before me and subscribed
in my presence this 15th day of December, 1971

Samuel L. Shapiro

SAMUEL L. SHAPIRO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1972